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***Via Certified Mailing -  
Return Receipt Requested***

October 22, 2015

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Richard Norwood  
Citizen Suit Coordinator  
U.S. Department of Justice  
Environment and Natural Resource Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

David Gibson, Executive Officer  
Regional Water Quality Control Board, San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, CA 92108-2700

Re: *California River Watch v. City of Laguna Beach*  
USDC Case No: 8:14-cv-01659-DOC-JCG  
Submission of Consent Decree for Agency Review

Dear Administrator McCarthy, Administrator Blumenfeld and Messrs. Norwood and Gibson:

Attached please find a fully executed Consent Decree by the parties to the above-referenced action. This Consent Decree is hereby being served on the U.S. Department of Justice, the Environmental Protection Agency (EPA) Administrator, and the Regional

October 22, 2015

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Administrator of EPA Region IX, pursuant to § 505(c)(3) of the federal Clean Water Act, 33 U.S.C. § 1365(c)(3), and the regulations thereunder, 40 C.F.R. § 135.5, for such agencies' review and comment, where appropriate, within 45 days of service hereof.

A copy of this Consent Decree is also hereby being served upon the California Regional Water Quality Control Board, San Diego Region ("San Diego Regional Board"), pursuant to Section IX of the enclosed Consent Decree, which provision similarly allows the San Diego Regional Board a 45-day review period.

Sincerely,



Jerry Bernhaut

Attorney for California River Watch

JB:lhbm

Enclosure

cc: RUTAN & TUCKER, LLP, Richard Montevideo, Counsel for the City of Laguna Beach

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17 Attorneys for Defendant  
18 CITY OF LAGUNA BEACH

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 CALIFORNIA RIVER WATCH, an IRC  
22 § 501(c)(3) non-profit, public benefit  
Corporation,

23 Plaintiff,

24 vs.

25 CITY OF LAGUNA BEACH,

26 Defendant.  
27  
28

Case No. 8:14-cv-01659-DOC-JCG

Hon. David O. Carter  
Courtroom 9D

**CONSENT DECREE**

Date Action Filed: October 14, 2014  
Trial Date: June 21, 2016

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1 CAS0109266, as amended effective April 1, 2015 ("2015 MS4 Permit");

2 WHEREAS, SCWD is a public agency which, pursuant to an agreement with  
3 the City (Water, Recycled Water, and Sewer Service Agreement dated June 28,  
4 1999), operates that portion of the City's sewer collection system, inclusive of all  
5 lines, mains, lift stations, and associated piping and equipment related thereto,  
6 generally located in the southern most portion of the City (hereafter, "SCWD  
7 Operated System");

8 WHEREAS, on or about June 10, 2014, CRW served the City with a 60-Day  
9 Notice of Violations and Intent to File Suit ("First Notice Letter") alleging various  
10 violations of the CWA, purportedly caused by "exfiltration" of sewage from the  
11 City Sanitary System, and by various alleged sanitary sewer overflows ("SSOs");

12 WHEREAS, on October 14, 2014, CRW filed a Complaint against the City in  
13 the United States District Court for the Central District of California, Case No. 8:14-  
14 CV-01659, alleging violations of the CWA based on the First Notice Letter  
15 ("Complaint"). In its Complaint, CRW incorporates the First Notice Letter and  
16 alleges the City committed 1825 violations of the CWA as a result of daily  
17 "exfiltration" of sewage from the City's Sanitary System, and 43 violations of the  
18 CWA as a result of SSOs from the Sanitary System;

19 WHEREAS, on March 20, 2015, the Court granted, in part, the City's Motion  
20 to Dismiss the Complaint, and dismissed CRW's alleged 1825 violations relating to  
21 its claim that sewage "exfiltrated" from the City's Sanitary System, finding CRW  
22 had failed to put forth any facts to support how, when and where the alleged  
23 "exfiltration" violations had occurred. (Docket #23, March 20, 2015 Decision.)  
24 Accordingly, the only violations remaining in the Complaint are based on the  
25 assertion that the City has discharged sewage to waters of the United States without  
26 an NPDES permit and that these violations are continuing;

27 WHEREAS on or about April 10, 2015 CRW served the City with a 60-Day  
28 Notice of Violations and Intent to File Suit ("Second Notice Letter") alleging

1 violations of the 2013 MS4 Permit based on alleged SSOs from the City's Sanitary  
2 System;

3 WHEREAS on or about July 1, 2015, CRW served the City with a 60-Day  
4 Notice of Violations and Intent to File Suit ("Third Notice Letter") alleging  
5 violations of both the 2009 and 2013 MS4 Permits, based on alleged SSOs from the  
6 City's Sanitary System and SSOs from the SCWD Operated System;

7 WHEREAS, CRW has not yet filed any new or amended complaint to pursue  
8 claims based on the Second or Third Notice Letters, but has asserted it would do so,  
9 barring a settlement of its disputes with the City;

10 WHEREAS, the City denies each and all of the claims and allegations in the  
11 Complaint and in CRW's First, Second, and Third Notice Letters;

12 WHEREAS, CRW and the City (collectively, the "Parties") have expended  
13 significant effort and resources in investigating, evaluating and litigating the  
14 allegations and claims set forth in the Complaint and in the First, Second and Third  
15 Notice Letters, and now wish to resolve and settle all disputes, obligations, and  
16 purported or actual claims or causes of action, which exist or may exist by and  
17 between CRW and the City, including without limitation, any disputes, obligations,  
18 claims and/or causes of action that were or could have been asserted in or pursuant  
19 to the Complaint and/or the First, Second or Third Notice Letters;

20 WHEREAS, the Parties have consented to the entry of this Consent Decree  
21 and Order without trial of any issues, and hereby stipulate that, in order to settle the  
22 claims alleged against the City in CRW's Complaint and in the First, Second and  
23 Third Notice letters, and to avoid the delays and expenses of litigation regarding the  
24 same, this Consent Decree should be entered;

25 WHEREAS, this Consent Decree constitutes a settlement of disputed claims.  
26 It is not an admission of jurisdiction or the validity of any of CRW's allegations.  
27 Should this Consent Decree fail to be entered for any reason, this Consent Decree,  
28 any prior drafts and any statement or other provision contained in this Consent

1 Decree and/or in any prior drafts shall have no legal effect and shall not be used for  
2 any purpose in any subsequent proceeding in this or any other litigation;

3 WHEREAS, the Court having considered the representations of the Parties,  
4 and after opportunity for comment by the United States Environmental Protection  
5 Agency, Region IX, and the U.S. Department of Justice pursuant to 33 U.S.C.  
6 § 1365(c)(3) and 40 C.F.R. § 135.5(a), and by the California Regional Water  
7 Quality Control Board, San Diego Region ("Regional Board"), and having  
8 determined that entry of this Decree is in the public interest,

9 NOW THEREFORE, before taking any testimony and without any  
10 adjudication of any fact or law beyond the Court's March 20, 2015 Decision  
11 (Docket #23), it is hereby ORDERED, ADJUDGED and DECREED as follows:

12 **CONSENT DECREE**

13 1. The above recitals are hereby incorporated into and shall become a part of this  
14 Consent Decree.

15 **I. JURISDICTION/VENUE**

16 2. For purposes of the entry of this Consent Decree only, the Parties have agreed  
17 that this Court has jurisdiction over both the subject matter and the Parties in this  
18 action, pursuant to CWA§ 505, 33 U.S.C. § 1365.

19 3. Venue is proper in this Central District of California pursuant to  
20 CWA§ 505(c)(1), 33 U.S.C. § 1365(c)(1), because this Court is the judicial district  
21 in which the City is located.

22 **II. APPLICABILITY AND BINDING EFFECT**

23 4. This Consent Decree shall apply to and be binding upon CRW and all of its  
24 members, both voting and non-voting, acting by and through its Board of Directors  
25 or under its direction and/or control, and the City, acting by and through the City  
26 Council, and both CRW's and the City's officers, employees, contractors,  
27 subcontractors, consultants, agents, representatives, assigns and volunteers when  
28 acting by and through CRW's Board of Directors or under its direction or control, or

1 acting by and through the City Council or under its direction or control. To the  
2 extent that federal law (including federal principles of res judicata and/or collateral  
3 estoppel) allows, this Consent Decree shall be considered binding upon all persons  
4 and entities who may hereafter file a citizen suit against the City regarding claims  
5 that are the subject of this Consent Decree, provided however, that CRW is not  
6 responsible for the actions of any non-voting members of CRW that may decide to  
7 pursue any unique or potentially differing interests said member or members have or  
8 may have in a separate action against the City or SCWD.

### 9 **III. CONSENT DECREE TERM**

10 5. The "Effective Date" of this Consent Decree shall be the date the Consent  
11 Decree has been entered by the Court and becomes a final enforceable order and not  
12 subject to any further rights of appeal. This Consent Decree shall expire on its own  
13 terms, and be of no further enforce and effect seven and one half (7.5) years after the  
14 Effective Date (hereafter, "Expiration Date").

### 15 **IV. AGREED TERMS OF CITY'S REMEDIAL MEASURES**

16 6. All of the following agreed-upon remedial measures to be undertaken by the  
17 City under this Consent Decree (hereafter "Remedial Measures") are expressly  
18 contingent on: (i) an adequate sewer fee increase being approved by the City's  
19 Sanitary System rate-payers in 2020; (ii) the City successfully obtaining, either  
20 directly or indirectly (through South Orange County Wastewater Authority), a \$10-  
21 million low-interest loan by the end of the City's current fiscal year (June 30, 2016);  
22 and (iii) the City retaining the ability to exercise its reasonable discretion to re-direct  
23 the funding required for the Remedial Measures provided herein, to other needed  
24 City programs or projects, if, for example, unforeseen circumstances arise or if the  
25 Regional Board or some other regulatory agency directs the City to commit and/or  
26 reprioritize funds to address other aspects of its Sanitary System or MS4 program, or  
27 some other public program or project. The City shall make a good faith effort to  
28 mitigate the effect any unforeseen circumstances may have on the City's ability to

1 implement the aforementioned Remedial Measures. Subject to the foregoing  
2 conditions, the City shall perform the below specified Remedial Measures:

3       6.1 Videoing: In accordance with the City's recently adopted 10-year  
4 Capital Improvement Program (CIP), the City has budgeted for closed circuit  
5 television (CCTV) inspections of all sewer collection lines in the City over five  
6 years. As outlined at the June 2, 2015 City Council meeting, the City will first  
7 implement a Pilot Main Line Inspection Program in connection with its Pilot Private  
8 Sewer Lateral Program and will conduct CCTV inspections of the main lines in the  
9 area of the City that are believed to have the most deficient private sewer laterals,  
10 followed by the inspection of other sewer lines throughout the City. The City  
11 anticipates commencing the full Main Line Inspection Program halfway through the  
12 City's next fiscal year (*i.e.*, the winter of 2016) to assess the condition of the lines.

13       6.2 Rehabilitation: Also as currently provided for in the City's CIP, based  
14 on the CCTV inspections, the City will use funds set aside in the CIP to repair all  
15 sewer lines rated a "4" or a "5" on the National Association of Sewer Service  
16 Companies Pipeline Assessment and Certification Program (PACP) grading system,  
17 if any such lines are discovered to exist. All repairs of a sewer line rated a "5" shall  
18 occur within one and one half (1.5) years of the rating determination. All repairs of  
19 a sewer line rated a "4" shall occur within two and one half (2.5) years of the rating  
20 determination.

21       6.3 Forest Avenue/Crestview: Again in accordance with the CIP, the City  
22 will implement improvements/replacement of portions of the sewer collection  
23 system along portions of Forest Avenue and portions of Crestview Drive.

24       6.4 Pilot Private Sewer Lateral Inspection and Repair Program: The City  
25 shall implement the recently-adopted Pilot Private Sewer Lateral Inspection and  
26 Repair Program (*i.e.*, requiring the inspection, cleaning, repair, and certification of  
27 all private sewer laterals the City identifies as deficient) in accordance with the  
28 updated and recently adopted Private Sewer Lateral Ordinance set forth in Laguna

1 Beach Municipal Code Chapter 17.50. This Ordinance requires private property  
2 owners to inspect and repair private sewer laterals upon one of the following events:  
3 (i) a sewer spill from a private sewer lateral; (ii) certain private property building  
4 remodels (involving work exceeding \$100,000 or involving the installation of  
5 bathroom, kitchen, or laundry facilities increasing the owner's sewage output); (iii)  
6 certain changes in use of the property served; (iv) the repair or replacement of any  
7 part of the private sewer lateral; (v) a significant repair or replacement of the main  
8 sewer line to which the lateral is attached; and/or (vi) where a City inspection and/or  
9 investigation reveals the private sewer lateral is not sufficiently functional.

10       6.5   Private Sewer Lateral Financial Incentive Program: The City will  
11 implement its recently approved Pilot Financial Incentive Program which assists  
12 private homeowners with repairing or replacing their private sewer laterals and/or  
13 connections (top hats). Under this grant program, eligible homeowners will receive  
14 a match of City funds for the lesser of 50% of the cost to repair or replace a  
15 defective private sewer lateral/connection or \$1,600 (per property). If the pilot  
16 financial incentive program leads to implementation of the full financial incentive  
17 program, as determined by the City in the exercise of its reasonable discretion, the  
18 program shall be funded with \$624,000 in total funds as budgeted over the course of  
19 6 years. The funds shall be allocated annually on a first come - first serve basis.

20       6.6   Audit: The City will continue to cooperate with the State Water  
21 Resources Control Board and the Regional Board in these Boards' completion of a  
22 formal audit of the City's sewer collection system under the Statewide General  
23 Waste Discharge Requirements for Sanitary Sewer Collection Systems, State Board  
24 Order No. 2006-0003, as amended in 2013. This formal audit began in the fall of  
25 2014.

26 7.       The City reserves the right, in its sole discretion, and in accordance with law,  
27 to determine (i) which persons shall perform any work described herein, including  
28 contractors, (ii) the scope and technical details of, and manner to implement, any

1 such work, subject to review and approval by any regulatory agency, including the  
2 Regional Board, which may, from time to time, exercise jurisdiction over the City's  
3 operations of the Sanitary System and/or MS4; and (iii) to redirect funds to other  
4 important City projects when it determines such is necessary in the exercise of its  
5 reasonable discretion, provided, however, the City shall make a good faith effort to  
6 mitigate the effect any unforeseen circumstances may have on the City's ability to  
7 implement the Remedial Measures listed in this Section IV of the Consent Decree.

8 8. The City shall not be deemed in default or breach of this Consent Decree by  
9 reason of any event or condition which constitutes a force majeure event. For  
10 purposes of this Consent Decree, a force majeure event is defined as any event  
11 arising from causes beyond the reasonable control of the City or its contractors that  
12 delay or prevents performance. A force majeure event includes, without limitation,  
13 acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather  
14 events, restraint by court order or public authority, delays caused by the action or  
15 inaction of federal, state, regional, or local permitting authorities and regulatory  
16 agencies, or other causes beyond the City's reasonable control.

17 **V. AGREED TERMS OF PLAINTIFF'S PUBLIC STATEMENT**

18 9. Within ten (10) days from the Effective Date, CRW shall issue the following  
19 public statement:

20 California River Watch is pleased to announce a settlement that  
21 resolves all of its claims and contentions against the City regarding the  
22 City's operation of its sanitary sewer collection system and its  
23 municipal storm water collection program. Laguna Beach has invested  
24 and continues to invest significant funds into both its sanitary sewer  
25 collection system and its municipal storm water program for the benefit  
26 of the environment and the protection of water quality throughout  
27 Laguna Beach. Laguna Beach is working hard to be an exceptional  
28 steward of the environment. River Watch supports Laguna Beach's

1 goals of achieving the highest of water quality for the benefit of its  
2 residents and its millions of annual visitors.  
3 CRW shall maintain this statement on its Website throughout the term of the  
4 Consent Decree until the Expiration Date. For at least 12 months after the Effective  
5 Date, CRW agrees to maintain this statement at the same location on its Website  
6 where it maintains all other documents relating to this lawsuit against the City. That  
7 location currently would be at: Home > Legal Cases > Resolved Cases. The Public  
8 Statement will be a link at that location just as are all the other referenced  
9 documents such as notice letters, settlements and consent orders. Should the design  
10 of the CRW website change during the 12 months after the Effective Date CRW  
11 agrees to maintain this statement at the same location on its Website where it  
12 maintains all other documents relating to Resolved Cases. After 12 months, the  
13 locations of the public statement shall be within CRW's sole discretion.

14 **VI. RELEASE OF CLAIMS AND COVENANT NOT TO SUE**

15 10. Effective as of the Effective Date, CRW, on behalf of itself, its officers,  
16 directors, voting and non-voting members acting by and through its Board of  
17 Directors or under its discretion and/or control, agents, employees, representatives,  
18 successors and assigns, and all organizations and entities under the control of CRW  
19 (collectively, "CRW Related Parties"), hereby releases, waives and acquits and  
20 forever discharges the City, the SCWD, and any and all past, present and future City  
21 Council members, SCWD Board members, and their past, present and future  
22 officers, agents, employees, representatives, volunteers, successors and assigns  
23 (collectively, the "Released Parties"), from and against any and all claims, causes of  
24 action, rights of action, liabilities, damages, losses, fines, penalties, fees, costs or  
25 expenses, including attorneys' fees, litigation costs and expenses, expert witness  
26 fees and costs, and including any claims for equitable, injunctive or declaratory  
27 relief, arising out of or in any way relating to any discharge or release, or alleged  
28

1 discharge or release, of pollutants into or from the City's Sanitary System, the City's  
2 MS4 System, or the SCWD Operated System, whether the discharge or release is in  
3 the form of vapors, odors, liquids or solids, whether released into the air, soil,  
4 pavement, or any groundwater or surface water, including into any "waters of the  
5 United States," and whether currently known or unknown, foreseen or unforeseen,  
6 anticipated or unanticipated, including those discharges of pollutants alleged or  
7 which could have been alleged in the Complaint or in the First, Second or Third  
8 Notice Letters, and occurring at any time prior to the Expiration Date (collectively,  
9 "Claims").

10 11. The "Claims" released herein are inclusive of any and all Claims under the  
11 Federal Water Pollution Control Act (the "Clean Water Act" – 33 U.S.C § 1251 et.  
12 seq.), the Resource Conservation and Recovery Act ("RCRA" – 42 U.S.C. § 6901 et  
13 seq.), the Comprehensive Environmental Response Compensation and Liability Act  
14 ("CERCLA" - 42 U.S.C. § 9601 et seq.), the California Hazardous Substance  
15 Account Act ("State Superfund" – Cal. Health & Safety Code § 25300 et seq.), the  
16 Porter Cologne Act (Cal. Water Code § 13000 et seq.), the California Hazardous  
17 Waste Control laws (Cal. Health & Safety § 25100 et seq.), the California Safe  
18 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 - Cal. Health &  
19 Safety Code § 25249.5 et seq.), any amendments to the foregoing, and any Claims  
20 based on the common laws of nuisance, trespass, waste, ultra-hazardous activity or  
21 negligence, and/or any other similar or related-type causes of action or theories of  
22 recovery, whether based on statute or common law, or based in law or equity. The  
23 Claims released herein do not include any Claims of any non-voting member of  
24 CRW that are personal, unique or potentially different from the "Claims" discussed  
25 above including such Claims for breach of contract, personal injury or property  
26 damage.

27 12. CRW is aware that it may hereafter discover facts in addition to or different  
28 from those it now knows or believes to be true with respect to the Claims released

1 herein. In furtherance of the intent of this Consent Decree, the release provided  
2 herein shall be and remain in effect as a full and complete release of all known and  
3 unknown Claims, regardless of the discovery or existence of any additional or  
4 different claim or facts relative thereto. CRW acknowledges and agrees it is  
5 waiving and releasing any and all rights the CRW Related Parties have or may have  
6 under California Civil Code Section 1542, and any other similar or related section of  
7 any state or federal provision or law. California Civil Code section 1542 provides  
8 as follows:

9       A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
10       WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
11       EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
12       THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST  
13       HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
14       WITH THE DEBTOR.

15 13. The releases provided herein on behalf of the CRW Related Parties are not  
16 conditioned upon timely compliance by the City of any obligations in this Consent  
17 Decree, except the City's obligation to make payment to CRW under Section VIII of  
18 this Consent Decree. Failure of the City to comply with Section VIII of the Consent  
19 Decree shall relieve CRW of all of its obligations under this Consent Decree.

20 14. In further consideration of the City's agreement to enter into this Consent  
21 Decree, the CRW Related Parties, and each and every one of them, acting under  
22 CRW's direction and/or control, hereby represent, warrant and covenant and agree  
23 not to sue or take any other steps to pursue or otherwise enforce any Claims against  
24 any of the Released Parties, occurring or allegedly occurring before, on or after the  
25 date CRW executes this Consent Decree, and through the Expiration Date.

26 15. From the date of its execution of this Consent Decree through the Expiration  
27 Date, CRW, on behalf of itself and all of the CRW Related Parties, and each and  
28

1 every one of them, acting under CRW's direction and/or control, hereby further  
2 represents, warrants, covenants and agrees not to actively cause, actively support, or  
3 otherwise actively encourage any Claim or other lawsuit against the City, either by  
4 providing financial or legal assistance, personnel time or other assistance to any  
5 third party; provided, however, that the foregoing shall not prevent CRW from  
6 communicating with regulatory agencies; acquiring public documents; addressing  
7 member concerns; providing otherwise available public documents (other than those  
8 obtained by CRW exclusively through discovery in this action); providing  
9 information or commenting in connection with administrative proceedings and other  
10 similar public comments or participation. Neither shall the foregoing prevent CRW  
11 from providing information or performing other actions required by law pursuant to  
12 a court order, regulatory order or subpoena.

13 16. Nothing in the agreement shall be construed to violate either American Bar  
14 Association Model Rules, Rules of the California State Bar or California Business  
15 and Professions Code.

16 17. This Consent Decree does not limit or affect the rights of either party as to  
17 any persons not parties to this Consent Decree.

18 18. Nothing in this Consent Decree shall preclude the City from asserting any  
19 legal or factual position in any action brought by any person or entity not a party to  
20 this Consent Decree, including any defenses it has or may have under the doctrines  
21 of res judicata or collateral estoppel.

22 19. Neither this Consent Decree nor the action taken hereunder shall constitute an  
23 admission on the part of the City of liability for any Claims, and in particular, of  
24 liability for any alleged violation of the Clean Water Act or applicable California  
25 law or other federal law regarding any matter referenced in this Consent Decree.  
26 The City hereby expressly denies any and all such liability.

27 20. The Parties hereto understand and agree that the SCWD is an intended third  
28 party beneficiary to this Consent Decree, and shall have the right, but not the

1 obligation, to enforce its terms involving the release of Claims and the Covenant  
2 Not to Sue by CRW, as such terms relate to SCWD (set forth in paragraphs 10 thru  
3 19 above). Any action taken by SCWD to interpret or enforce such terms of the  
4 Consent Decree shall be through an action to intervene in this Court directly, and  
5 not through the provisions set forth in paragraph 21 below.

6 **VII. BREACH OF CONSENT DECREE AND DISPUTE RESOLUTION**

7 21. Any disputes between CRW and the City (collectively, "Parties") concerning  
8 any alleged interpretation or breach of this Consent Decree (hereafter, "Dispute"),  
9 excluding the City's obligation to make timely payment under Section VIII of this  
10 Consent Decree, shall be subject to the following dispute resolution procedures.  
11 Failure to satisfy the payment condition set forth in Section VIII is a substantial  
12 breach of this Consent Decree and relieves CRW of its obligations under this  
13 Consent Decree.

14 21.1 Good Faith Negotiations. The Parties shall make good faith efforts to  
15 resolve informally any Dispute. If informal efforts to resolve the alleged Dispute  
16 are unsuccessful, the Party asserting the Dispute shall provide written notice of the  
17 alleged Dispute and that Party's intent to initiate the dispute resolution procedure of  
18 this Section. Written notice shall include a recitation of all facts and circumstances  
19 giving rise to the Dispute, including the particular provisions of the Consent Decree  
20 alleged to have been breached and the specific relief requested. The relief requested  
21 must be within the legal power of the party to redress. The party receiving the  
22 written notice of Dispute shall respond in writing within forty-five (45) days of  
23 receiving the written notice of Dispute. If the breach can be fully addressed by  
24 specific performance and the noticed party fully complies with the noticing party's  
25 request for relief by providing such specific performance, then no further action can  
26 be taken regarding the Dispute and the noticing party shall have no basis for further  
27 pursuing a claim to obtain monetary relief.

28 21.2 Mediation. If the Parties have made a good faith effort to comply with

1 Section 21.1 above and the Dispute is not resolved by the Parties within forty-five  
2 (45) days after such notice is given, such Dispute shall be submitted to mediation  
3 before a mutually agreeable neutral mediator from the Central District Court's  
4 Mediation Panel or before a mediator otherwise agreed to by the Parties. Any Party  
5 may request that the Court select a mediator if the Parties cannot reach agreement.  
6 The Parties shall each bear their own costs and attorney's fees incurred in  
7 connection with such mediation. If as a result of mediation the Dispute has been  
8 fully addressed through specific performance and the noticed party fully complies  
9 with the specific performance agreed upon in the mediation, then no further action  
10 can be taken regarding the Dispute and the noticing party shall have no basis for  
11 further pursuing a claim to obtain monetary relief.

12       21.3 Arbitration. If, and only if, the Dispute cannot be resolved by the  
13 Parties pursuant to the above mechanisms, such Dispute shall be submitted for  
14 binding arbitration before a mutually agreeable neutral arbitrator. Any Party may  
15 request that the Presiding Judge of the Central District of California select an  
16 arbitrator if the Parties cannot reach agreement. In the event binding arbitration  
17 takes place, the Parties agree that no discovery shall be permitted. Briefing will be  
18 limited to one (1) brief of no longer than twenty-five (25) pages for each Party,  
19 submitted no later than fourteen (14) days before the scheduled arbitration hearing.  
20 The arbitration hearing is limited to a maximum of two (2) days, with each Party  
21 having no more than one (1) day to present its case to the arbitrator. The  
22 determination of the arbitrator shall be binding upon the Parties. Within thirty (30)  
23 days following the conclusion of the arbitration hearing, the arbitrator shall issue a  
24 written statement of decision describing his/her determinations, and the reasons for  
25 the determinations. With the exception of attorney's fees incurred in preparation for  
26 the arbitration, the arbitrator shall be empowered to determine a "prevailing party"  
27 and award payment to that entity for any and all fees and costs incurred in  
28 connection with obtaining the decision, the arbitration itself, including time spent by

1 the attorneys and any expert at the arbitration proceeding, including all reasonable  
2 fees and costs incurred in effecting the arbitrator's decision, and including, but not  
3 limited to, the arbitrator's fees and costs, any expert fees and costs reasonably  
4 incurred in connection with the arbitration, and any attorneys' fees reasonably  
5 incurred in the arbitration and thereafter to effect the arbitrator's  
6 judgment/determinations. To the extent there are multiple issues with a different  
7 prevailing party for one or more issues, the arbitrator may take those facts into  
8 account in terms of an award for fees and costs. Judgment upon any determination  
9 rendered by the arbitrator shall be entered by the Court.

10       21.4 Waiver. By agreeing to these dispute resolution provisions, including  
11 the binding arbitration provision, the Parties understand that they are waiving certain  
12 important rights and protections that otherwise may have been available to each of  
13 them if a Dispute between them were determined by a judicial action including,  
14 without limitation, the right to a jury trial, and certain rights of appeal. Other than  
15 the remedies contained within this Consent Decree including dispute resolution and  
16 specific performance of the terms of this Consent Decree, there are no other  
17 remedies. The Parties specifically agree that there is no basis within this Consent  
18 Decree or within the contemplation of the Parties to support a claim for  
19 consequential damages due to any form of breach.

## 20                   **VIII. ATTORNEY'S FEES AND COSTS**

21 22. Within Thirty (30) days of the Effective Date of this Consent Decree, the City  
22 shall pay CRW the sum of fifty thousand dollars (\$50,000) in full satisfaction of all  
23 claims by CRW for attorneys' fees and costs incurred in connection with this action.  
24 The City's check shall be made payable to California River Watch and mailed to the  
25 Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469.

26 23. Except as stated in subparagraph 21.3 above, each Party shall bear its own  
27 attorneys' fees, costs and expenses incurred in connection with this action.  
28

1 **IX. NOTICE TO THE FEDERAL GOVERNMENT AND THE**  
2 **CALIFORNIA REGIONAL QUALITY CONTROL BOARD, SAN DIEGO**  
3 **REGION**

24. The Parties acknowledge and agree that entry of this Consent Decree is subject to the requirements of CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), which provides that “[n]o consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following receipt of a copy of the proposed consent judgment by the Attorney General and the [EPA] Administrator.” Within five (5) business days following the Parties’ execution of this document, CRW shall serve copies upon the EPA Administrator, the Attorney General and the Regional Administrator of EPA Region IX in San Francisco (collectively, “US EPA”), in accordance with 40 C.F.R. § 135.5(a), and upon the Regional Board for its review and comment (within forty-five (45) days of its receipt).

4 **X. GENERAL PROVISIONS**

25. All reports, notices or other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

8 a. To City of Laguna Beach: John Pietig  
9 City Manager  
505 Forest Avenue  
0 Laguna Beach, CA 92651  
Telephone (949) 497-0704  
Facsimile (949) 497-0771

b. To California River Watch: Jerry Bernhaut, Esq.  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Telephone (707) 528-8175  
Facsimile (707) 528-8675

26. This Consent Decree and its terms shall inure to the benefit of and be binding upon each of the Parties and each and all of their respective predecessors, successors, and assignees, as though they were parties to this action.

1 27. Each of the Parties have been fully advised by its attorney as to this Consent  
2 Decree and all provisions contained within it and acknowledges that its signing of  
3 this Consent Decree is based solely upon the written representations contained in  
4 this Consent Decree and not based on any inducement, promise or representation not  
5 expressly stated in this Consent Decree. Additionally, each of the Parties  
6 acknowledges, in signing this Consent Decree, that it constitutes the full, complete,  
7 and entirety of the terms and conditions agreed to by them in settling the dispute  
8 between them, i.e. Case No. 8:14-cv-01659-DOC-JCG.

9 28. This Consent Decree is made and entered into under the laws of the State of  
10 California and the United States and shall be interpreted, governed and enforced  
11 pursuant to these laws.

12 29. Should any provision of this Consent Decree be held invalid or illegal, such  
13 illegality shall not invalidate the remainder of this Consent Decree. In that event,  
14 this Consent Decree shall be construed as if it did not contain the invalid or illegal  
15 part, and the rights and obligations of the Parties shall be construed and enforced  
16 accordingly.

17 30. The Parties have mutually negotiated this Consent Decree and the doctrine of  
18 *contra proferentum* does not apply.

19 31. Each signatory of this Consent Decree signing on behalf of another, warrants  
20 that he or she has the authority to sign on behalf of said person or entity and all  
21 persons covered by this Consent Decree. This Consent Decree may be executed in  
22 counterparts with each counterpart being interpreted as an original.

23 32. This Consent Decree contains the entire agreement of the Parties and shall not  
24 be modified by any prior oral or written agreement, representations or  
25 understanding. Prior drafts of this Consent Decree shall not be used in any action  
26 involving the interpretation or enforcement of this Consent Decree. This Consent  
27 Decree shall not be amended or modified except by the written order of this Court.  
28 Any modification of this Consent Decree by the Parties shall be in writing and

1 approved by the Court before it will be deemed effective.

2 33. This Consent decree shall expire on the Expiration Date.

3 **XI. RETENTION OF JURISDICTION**

4 34. This Court shall retain jurisdiction to enforce the terms and conditions of this  
5 Consent Decree and to resolve any disputes arising hereunder until its Expiration  
6 Date. After the Expiration Date, the Parties shall have no further obligations or  
7 responsibilities of any kind under this Consent Decree.

8  
9 **IT IS SO ORDERED.**

10 Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

11

12

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14


\_\_\_\_\_  
Judge David O. Carter

15 **IT IS SO AGREED AND STIPULATED:**

16

CITY OF LAGUNA BEACH

17

18 Dated: 10/15, 2015 By:   
19 John Pietig  
City Manager

20

ATTEST:

21

22

  
City Clerk

23

24

CALIFORNIA RIVER WATCH

25

26 Dated: \_\_\_\_\_, 2015 By: \_\_\_\_\_  
27 Larry Hanson  
President

28

1 approved by the Court before it will be deemed effective.

2 33. This Consent decree shall expire on the Expiration Date.

3 XI. RETENTION OF JURISDICTION

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6 Date. After the Expiration Date, the Parties shall have no further obligations or  
7 responsibilities of any kind under this Consent Decree.

8  
9 IT IS SO ORDERED.

10 Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

11  
12  
13 \_\_\_\_\_  
14 Judge David O. Carter

15 IT IS SO AGREED AND STIPULATED:

16 CITY OF LAGUNA BEACH

17  
18 Dated: \_\_\_\_\_, 2015 By: \_\_\_\_\_  
19 John Pietig  
20 City Manager

21 ATTEST:

22 \_\_\_\_\_  
23 City Clerk

24 CALIFORNIA RIVER WATCH

25 Dated: Oct. 7, 2015 By: Larry Hanson  
26 Larry Hanson  
27 President  
28

1 Approved as to form:

2  
3 LAW OFFICE OF JACK SILVER

4  
5 By: Jerry Bernhaut  
6 Jerry Bernhaut, Esq.  
7 Attorney for Plaintiff  
8 California River Watch  
9

Dated: 10-15, 2015

10 Approved as to form:

11  
12 RUTAN & TUCKER, LLP

13  
14 By: Richard Montevideo  
15 Richard Montevideo, Esq.  
16 Attorney for Defendant  
17 City of Laguna Beach  
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Dated: 10/16, 2015